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Division of Planning
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STAFF REPORT
SECTIONS A14-14 THRU A14-25 OF THE SUFFOLK COUNTY ADMINISTRATIVE CODE

Applicant: Waterfront Moratorium
Municipality: Inc. Village of Huntington Bay
Location: Shoreline of East Neck along Huntington Bay from the east bank of Huntington Harbor to the west bank of Centerport Harbor

Received: 9/14/21
File Number: Hb-21-01

Jurisdiction: Moratorium – along the shoreline of Suffolk County

PROPOSAL DETAILS

OVERVIEW – Referral from the Inc. Village of Hunting Bay Board of Trustees for a proposed six-month moratorium relating to Buildings and Structures at the Village shoreline. No application will be accepted or processed or any permit or approval be issued, by the Board of Trustees, the Village of Huntington Bay Zoning Board of Appeals or any other board, department, officer or employee of the Village, calling for the construction modification, alteration, or enlargement of any building or structure located within twenty (20) feet of the mean High-water mark of Huntington Harbor or Huntington Bay.

The proposed moratorium is applicable to multiple properties fronting along Huntington Bay and Huntington Harbor and includes the shoreline of East Neck (Great Neck) from the east bank of Huntington Harbor the west bank of Centerport Harbor and within the zoning categories of the Waterfront Preservation Districts (WPD) A1, B1, C1, D1 and the “Harborside” D1 Waterfront Preservation District (see attached Inc. Village of Huntington Bay zoning map).

As per information referred to the Suffolk County Planning Commission from the Inc. Village of Huntington Bay, pursuant to 6 NYCRR 617.5(c)(36), the proposed local law is a Type II Action exempt from environmental review pursuant to the State Environmental Quality Review Act (SEQRA). Accordingly, no environmental assessment form has been prepared.

STAFF ANALYSIS

As indicated in referral material from the Inc. Village of Huntington Bay to the Suffolk County Planning Commission, the Village Board of Trustees find that:

1. There has been a recent proliferation of new and proposed development along the waterfront in the Village of Huntington Bay.
2. Certain development, if left unchecked poses the threat of permanent negative effect upon the Village's waterfront in the form of degraded views and diminishment of the use and enjoyment of the waterfront by residents and members of the public among others.
3. The village is currently engaged in the process of developing and adopting a Local Waterfront Revitalization Plan ("LWRP") with the goal of protecting the Village waterfront from harmful development.
4. It will be in the best interests of the Village, its residents, and the public at large to impose a moratorium.
5. Imposing a moratorium will permit the Village a reasonable time to complete and adopt its LWRP.

In addition to the proposed enactment of the six-month time frame of the moratorium, the "law further provides for two six-month extensions of the moratorium by resolution of the Board of Trustees." This clause effectively makes the moratorium an eighteen (18) month moratorium. This is especially so if the moratorium is tied to the NYS Department of State (DOS) Local Waterfront Redevelopment Plan (LWRP) process.

An LWRP is prepared in partnership with the NYS DOS, and in accordance the New York State Waterfront Revitalization of Coastal Areas and Inland Waterways Act (NYS Executive Law, Article 42). The LWRP serves to coordinate local and State actions needed to achieve the community's goals for its waterfront.

The Local Waterfront Revitalization Plans are approved on three levels of government through local adoption; Secretary of State approval; and Federal concurrence from the National Oceanic and Atmospheric Administration's (NOAA) Office of Coastal Management for coastal LWRP's. There are forty-four coastal policies that need to be addressed in the LWRP.

When the LWRP is complete, has been reviewed by the Department of State, and has gone through the 60-day public comment period, the municipality will adopt the Final LWRP and supporting local laws by resolution(s).

Once adopted by the local municipality, the Final LWRP is formally submitted to the Department of State for approval. After final review and development of the findings, the document will be forwarded to the Secretary of State with a recommendation for approval. Once approved, DOS will notify the community, State legislators, adjacent communities, and state agencies with programs that may have potential effect on the LWRP.

The final step for approval in coastal communities is submission of the LWRP to the National Oceanic and Atmospheric Administration (NOAA), Office of Coastal Management (OCM). DOS will submit the Final LWRP to OCM, requesting a Program Change to the State's Coastal Management Program.

It is the belief of the staff that the proposed six to eighteen month moratorium is not sufficient time to permit the Village "reasonable time to complete and adopt its LWRP". In fact, if the

intent is to keep the moratorium in effect while the LWRP is “developing” and adopted, it may take several years to complete the LWRP process. To demonstrate this point; of the forty-four municipal entities in Suffolk County (ten Towns and thirty-three Villages), Thirty-eight have shoreline or waterfront along the Long Island Sound, the Atlantic ocean or bays, estuaries or rivers to any of the forgoing bodies of water. Of the thirty-eight municipalizes with shoreline only nine (9) have adopted and approved LWRP’s since the inception of the Act nearly four decades ago.

As indicated in the Suffolk County Planning Commission Advisory News (Volume 2 Issue 1) a moratorium is, from one perspective, the most extreme land use action that a municipality can take because it suspends completely the rights of land owners to use their property.

From the perspective of the Suffolk County Planning Commission a limited or narrowly scoped moratorium generally does not involve regional or inter-community impacts of an adverse nature and generally are considered matters for local determination. The Suffolk County Planning Commission has published guidance on the structure and content of moratoria. The moratorium should be tied to a legitimate planning initiative. Where possible the moratorium should be limited and allow for the due process of applications and assure the proper balance between property rights and community planning. The moratorium should not be used to delay controversial development applications. As noted, the proposed moratorium is broad in its objective (adoption of a LWRP) and tide to an LWRP adoption process that is likely to take longer than the eighteen (18) months to fully complete.

The dynamics of the coastal barrier and the hazards to property and infrastructure in these areas are generally well known and therefore the Local Law should not be too severely criticized for the brevity of the findings that confirm the necessity of this moratorium. However, the Local Law does not point out other alternatives to the moratorium considered and rejected or the urgency of the conditions necessitating the moratorium now as opposed to those conditions existing in the past.

The Moratorium language notes “a recent proliferation of new and proposed development along the waterfront in the Village of Huntington Bay.” However, Suffolk County Planning Commission referral logs do not show an increase in NYS GML 239 or Suffolk County Administrative Code (Article XIV) required site plans, special permits or variance petition referrals from the Village of Huntington Bay as would be expected since actions within 500 feet of the shoreline require, by law, a referral to the Commission. Also, there is no Inter-municipal Agreement between the County Planning Commission and the Village of Huntington Bay (similar to other Villages and Towns in Suffolk) which is an initiative to reduce paperwork and staff time required for the review of minor matters that must be referred to the Commission. Therefore, it is the belief of the staff of the Suffolk County Planning Commission that, the applicability of the moratorium appears to be to bulkheads and other shore line hardenings, docks and boathouses, etc. that may be within 20 feet of mean high water and referred to as “structures and buildings” in the Local Law. The moratorium can be more specific in its legislative intent.

Village goals or objectives enumerated in the moratorium as written, appear to be limited to preventing “degraded views and diminishment of the use and enjoyment of the waterfront by residents and members of the public, among others.” It is not clear what nexus there is to new buildings and structures within 20 feet of mean high water on the views and use and enjoyment of the waterfront by residents and the public. There are no less than seven 7 “recreation and open space” locations along the waterfront in the Village of Huntington Bay. In addition, there are only five (5) privately held vacant lots along the water front of the Village that may pose future or pending development. This does not seem to support a Village wide impact regarding “degraded views”, nor does it indicate a “recent proliferation of new and proposed development along the waterfront in the Village of Huntington Bay.” It is not clear what the pressing or urgent

issues are warranting a moratorium. The targeted goal and objective of the moratorium local law should be clarified.

It is the belief of the staff of the Suffolk County Planning Commission that the proposed Local Law Section regarding exemption could be further clarified to include language to the effect that:

This moratorium shall not affect applications which have already been scheduled for public hearing or

- The issuance of a demolition/building permit required in connection with the ordinary repairs and/or maintenance of a structure for which there exists a valid certificate of occupancy,
- The issuance of a demolition/building permit for interior renovations in connection with property (provided there is no change in facade appearance or parking requirements), for which there exists a valid certificate of occupancy.
- The issuance of a building permit in connection with a project, which obtained prior site plan approval or approval prior to the effective date of the moratorium.

In addition, it is the belief of the staff that the “Hardship” (Section 5.) provisions should be embellished to include more objective standards including but not limited to the following examples:

- Submission of proof of hardship. Hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a building permit, site plan, subdivision, land division, variance, special permit, change of zone, or other approval during the period of the moratorium.
- Substantive requirements. No relief shall be granted hereunder unless the Village Board shall specifically find and determine and shall set forth in its resolution granting such hardship that:
 - Failure to grant a hardship to the petitioner will cause the petitioner undue hardship, which hardship is substantially greater than any harm to the general public welfare resulting from the granting of the exemption; and
 - Petitioners circumstances are different from any other member of the community to the extent the petitioner is burdened by the moratorium substantially greater than any other member of the community; and
 - Grant of the hardship will clearly have no adverse effect upon any of the Village goals or objectives enumerated in the moratorium; and
 - The project or activity for which the petitioner seeks a hardship will be in harmony with the existing character of the Village as a whole and the area of the Village in which the affected land is located, and will be consistent with any interim data, recommendations, or conclusions which may be drawn from any community planning effort then in progress or under review.

The Incorporated Village of Huntington Bay may wish to consider the Suffolk County Planning Commission guidelines on Climate Change found in the Suffolk County Planning Commission Guidebook section 4.10, adopted by the Commission on August 4, 2021. For convenience of the public, Suffolk County has made available through this section a [web map now in a web app](#):

The web map indicates tax map parcels likely to be inundated by flood waters. Rising sea levels, coastal flooding, coastal erosion, drought and wildfires, more frequent hurricanes and heavy rain events with local street flooding, severe winter storms, surface water eutrophication and ocean nitrification are some climate change issues presenting itself in Suffolk County. Zoning codes, Local Waterfront Revitalization Plans, and building regulations are various methodologies (individually or combined) to implement coastal best management practices. An overlay zoning district linked to the Inc. Village of Huntington Bay's Waterfront Preservation Districts A1, B1, C1, and D1, that adds regulations including the applicable best management practices identified in the Suffolk County Planning Commission Guidebook can achieve the regulatory result the Village is seeking short of the LWRP process and within the eighteen month time frame established by the moratorium local law.

STAFF RECOMMENDATION

Disapproval of the Inc. Village of Huntington Bay proposed Local Law No. 2; **Village of Huntington Bay Waterfront Moratorium**, to impose an 18 month (six month plus two six month extensions) suspension on land use applications so that "no application will be accepted or processed or any permit or approval be issued, by the Board of Trustees, the Village of Huntington Bay Zoning Board of Appeals or any other board, department, officer or employee of the Village, calling for the construction modification, alteration, or enlargement of any building or structure located within twenty (20) feet of the mean High-water mark of Huntington Harbor or Huntington Bay. "

Reasons:

A moratorium is, from one perspective, the most extreme land use action that a municipality can take because it suspends completely the rights of owners to use their property.

1. It is the belief of the staff that the proposed six to eighteen month moratorium is not sufficient time to permit the Village "reasonable time to complete and adopt its LWRP. In fact, if the intent is to keep the moratorium in effect while the LWRP is "developing" and adopted, it may take several years to complete the LWRP process (see SCPC report).
2. There does not appear to be findings of fact that confirm the necessity of the action or how serious and urgent these circumstances are. The Moratorium language notes "a recent proliferation of new and proposed development along the waterfront in the Village of Huntington Bay." The assertion is not supported by trend data or processing volume. It is the belief of the staff of the Suffolk County Planning Commission that, the applicability of the moratorium appears to be to bulkheads and other shore line hardenings, docks and boathouses, etc. that may be within 20 feet of mean high water and referred to as "structures and buildings" in the Local Law. The moratorium can be more specific in its legislative intent.
3. No finding in the moratoria discusses that there are no other alternatives, less burdensome on property rights than a moratorium. For example there is no discussion why an overlay zoning district linked to the Inc. Village of Huntington Bay's Waterfront Preservation Districts A1, B1, C1, and D1, that adds regulations including the applicable best management practices identified in the Suffolk County Planning Commission

Guidebook cannot achieve the regulatory result the Village is seeking short of the LWRP process and within the eighteen month time frame established by the moratorium local law.

4. There are no findings that indicate why the existing land use ordinances are not adequate. Village goals or objectives enumerated in the moratorium as written, appear to be limited to preventing “degraded views and diminishment of the use and enjoyment of the waterfront by residents and members of the public, among others.” It is not clear what nexus there is to new buildings and structures, within 20 feet of mean high water, on the views and use and enjoyment of the waterfront by residents and the public. There are no less than seven 7 “recreation and open space” locations along the waterfront in the Village of Huntington Bay. In addition, there are only five (5) privately held vacant lots along the waterfront of the Village that may pose future or pending development. This does not seem to support a Village wide impact regarding “degraded views”, nor does it indicate a “recent proliferation of new and proposed development along the waterfront in the Village of Huntington Bay.” It is not clear what the pressing or urgent issues are warranting a moratorium. The targeted goal and objective of the moratorium local law should be clarified.

Comments:

1. It is the belief of the staff of the Suffolk County Planning Commission that the proposed Local Law Section regarding exemptions and hardships could be further clarified (see SCPC staff report).
2. The Incorporated Village of Huntington Bay may wish to consider the Suffolk County Planning Commission guidelines on Climate Change found in the Suffolk County Planning Commission Guidebook section 4.10. For convenience of the public, Suffolk County has made available through this section a [web map now in a web app](#):

<https://gis.suffolkcountyny.gov/portal/apps/webappviewer/index.html?id=3335037e07594e8aa4462e2978959ba6>

The web map indicates tax map parcels likely to be inundated by flood waters. An overlay zoning district linked to the Inc. Village of Huntington Bay’s Waterfront Preservation Districts A1, B1, C1, and D1, that adds regulations including the applicable best management practices identified in the Suffolk County Planning Commission Guidebook can achieve the regulatory result the Village is seeking short of the LWRP process and within the eighteen month time frame established by the moratorium local law.

3. As per information referred to the Suffolk County Planning Commission from the Inc. Village of Huntington Bay, pursuant to 6 NYCRR 617.5(c)(36), the proposed local law is a Type II Action exempt from environmental review pursuant to the State Environmental Quality Review Act (SEQRA). Accordingly, no environmental assessment form has been prepared. It should be noted that suspension of regulated shoreline activities intended to prevent erosion, flooding, etc., may allow such adverse environmental impacts to continue on the coastal properties within the Village. While the SEQRA determination may be technically correct it does not imply that the effect of the proposed moratorium, over its duration, will not have an adverse effect on the coastal environment. A finding in the proposed moratorium language should be made toward the assessment of the suspension of regulated activities on certain known problematic properties.

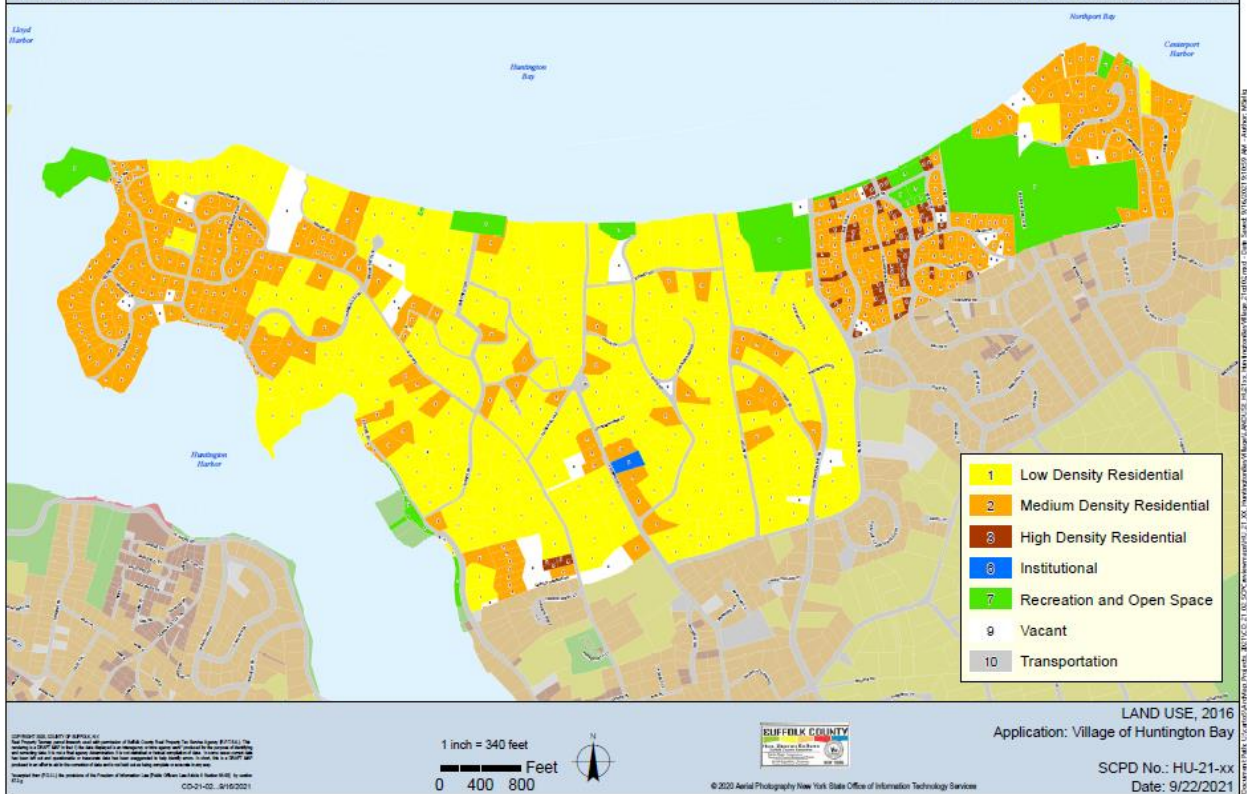
VILLAGE OF HUNTINGTON BAY

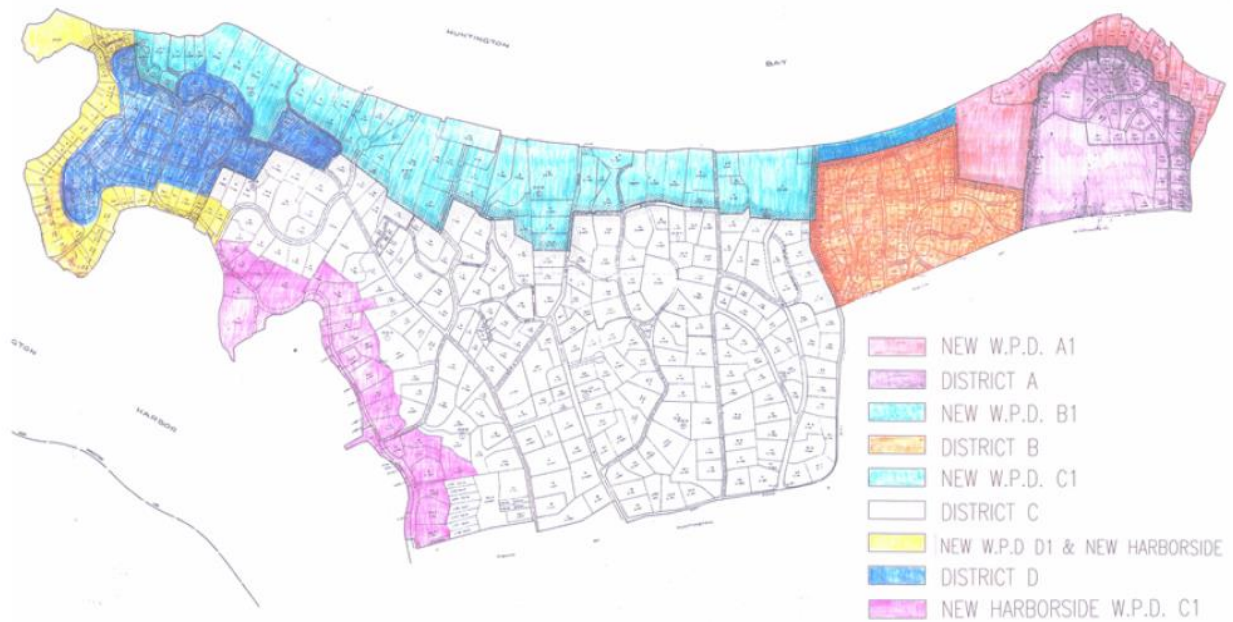
Town of Huntington - Suffolk County, New York



VILLAGE OF HUNTINGTON BAY

Town of Huntington - Suffolk County, New York





**INCORPORATED VILLAGE OF HUNTINGTON BAY
BOARD OF TRUSTEES**

**PROPOSED LOCAL LAW NO. 2 OF 2021 ENACTING A MORATORIUM
ON APPROVAL OF WATERFRONT STRUCTURES WITHIN THE
VILLAGE OF HUNTINGTON BAY**

BE IT HEREBY ENACTED by the Board of Trustees of the Incorporated Village of Huntington Bay as follows:

Section 1. Legislative intent and purpose.

The Board of Trustees of the Village of Huntington Bay ("Board of Trustees") finds that there has been a recent proliferation of new and proposed development along the waterfront in the Village of Huntington Bay (the "Village"). Certain development, if left unchecked, poses the threat of permanent negative effect upon the Village's waterfront in the form of degraded views and diminishment of the use and enjoyment of the waterfront by residents and members of the public, among others.

The Village is currently engaged in the process of developing and adopting a Local Waterfront Revitalization Plan ("LWRP") with the goal of protecting the Village waterfront from harmful development. In the interim, the Board of Trustees finds that it will be in the best interests of the Village, its residents, and the public at large to impose a moratorium with respect to applications for and approvals of certain development on or in close proximity to the waterfront to permit the Village a reasonable time to complete and adopt its LWRP.

Section 2. Moratorium on applications and approvals.

From and after the effective date of this law, and continuing for a period of time set forth hereinafter, no application shall be accepted or processed, nor shall any permit or approval be issued, by the Board of Trustees, the Village of Huntington Bay Zoning Board of Appeals, or any other board, department, officer or employee of the Village, calling for the construction, modification, alteration, or enlargement of any building or structure located within twenty (20) feet of the mean high-water mark of Huntington Harbor or Huntington Bay. The foregoing prohibition shall not apply to an extension of a period of time to complete a building or structure for which a building permit was duly issued by the Village Building Department prior to the effective date of this law.

Section 3: Effect on pending applications.

Pending applications for construction activities relating to any building or structure covered by the moratorium for which a public hearing has been held before any Village board are exempt from the provisions of this moratorium. All other applications shall be suspended until such time as the moratorium expires or is otherwise terminated.

Section 4. Duration of moratorium.

- (a) The moratorium established pursuant to this law shall be effective until and including the date six months from the date this law is duly adopted by the Board of Trustees, unless sooner terminated as provided herein.
- (b) Notwithstanding the preceding subsection, the Board of Trustees may, by resolution adopted by a majority of its members, extend the duration of the moratorium provided for herein for not more than two periods of six months each (twelve months total).
- (c) Notwithstanding subsections (a) and (b), the Board of Trustees may, by resolution adopted by a majority of its members, terminate the moratorium enacted by this law at any time prior to its expiration, or expiration of any extension.

Section 5. Hardship.

An owner of property who believes that the provisions of this law has caused, or will cause, such owner to suffer severe financial hardship or result in significant and irreparable damage to real property, may apply for relief to the Board of Trustees which, after a public hearing, may relieve the applicant from the moratorium, in whole or in part. The existence of severe financial hardship shall be demonstrated in the same manner and upon the same quality of proof as would be required for a use variance.

Section 6. Severability.

If any section, paragraph, sentence, clause or part of this local law shall be adjudged invalid or unconstitutional by a court of competent jurisdiction, then such adjudication shall not affect the validity of the local law as a whole or any section, paragraph, sentence, clause or part thereof not so adjudged invalid or unconstitutional it being the express intent of the Board of Trustees that said remaining section(s), paragraph(s), sentence(s), clause(s) or part(s) should continue in full force and effect notwithstanding.

Section 7. Effective date.

This local law shall take effect immediately upon filing with the Office of the Secretary of State.

Suffolk County Planning Commission

Advisory News

Volume 2
Issue 1
Spring - 1998

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MORATORIUM ON DEVELOPMENT

A moratorium on development is a local law or ordinance that suspends the right of property owners to obtain development approvals while the community takes time to consider, draft and adopt land use plans or rules to respond to new or changing circumstances not adequately dealt with by its current laws.

Development moratoria may be general or specific. A **general moratorium** imposes a ban on all development in the community. Hardship exemptions may be provided and certain actions may be exempted.

A **specific moratorium** may prevent development approvals in a particular geographic area or of a certain type. Moratoria have suspended the right to process proposals relating to a specific land use. For example, they have been enacted to affect only the construction of docks, for instance, or communications antennas.

PURPOSE

A moratorium on development preserves the status quo for a reasonable time while the municipality develops and adopts a land use strategy to respond to new or recently perceived problems. The moratorium prevents developers and property owners from rushing to develop their land under current land use rules that the community is in the process of changing. By so doing, it helps to accomplish the purpose of the new rules by giving them the broadest possible applicability and preventing development that is inconsistent with them.

AUTHORITY

There is no specific statutory authorization to adopt a moratorium on development. The courts have pointed to two separate sources of authority, while consistently confirming the municipal power to enact moratoria.

Communities are implicitly authorized to take those actions they deem reasonable to encourage the most appropriate use of the land throughout the municipality. In light of new or changing circumstances, a moratorium may be necessary to allow the community to achieve this express purpose of zoning and land use planning.

Some courts have held that a **development moratorium is a form of zoning**, implying that it is part of the statutorily delegated power to adopt and amend zoning provisions. Alternatively, a community's authority to adopt a moratorium has been referred to as a "police power" measure appropriate to prevent conditions that threaten the community's health, safety, welfare and morals.

IMPLEMENTATION

A moratorium is, from one perspective, the most extreme land use action that a municipality can take because it suspends completely the rights of owners to use their property. Seen in this light, it is advisable to precede the adoption of a moratorium by **findings** that confirm the necessity of this action. What are the **conditions** that mandate the imposition of a moratorium? Are no other **alternatives**, less burdensome on property rights, available? Why are the existing land use plans and ordinances not adequate? What **recent circumstances** have occurred that justify the adoption of the moratorium? How serious and **urgent** are these circumstances? What **hard evidence** is there to document the necessity of the moratorium?

When adopting a moratorium, the municipality may set forth how the situation that gave rise to the moratorium is to be dealt with. What local bodies are responsible? What studies are to be done? What resources are being made available to complete those studies? Can deadlines be established for various steps in the process? **The more specific and legitimate this plan and timetable are, the more likely the moratorium will be found to be reasonable.**

Based on this action plan and timetable, a date can be selected for the expiration of the moratorium. A moratorium can be extended if the timetable cannot be met; however, the reasonableness of the action is enhanced by setting a date for expiration that is legitimate under the circumstances.

A moratorium should be adopted in conformance with all procedures required of any zoning or land use action, including notice, hearing, the formalities of adoption and filing. While a moratorium does not require an environmental review under the State Environmental Quality Review Act, if it affects adjacent municipalities or county facilities, it may be subject to review by those governments before it can be formally adopted. **The Suffolk County Planning Commission considers suspension of any portion of a Zoning Code to be a "municipal zoning action" requiring review by the Commission.**

LIMITATIONS AND CONCERNS

Since development moratoria affect property rights so severely, they must be reasonable or run the risk of being challenged, voided by the courts and, perhaps, resulting in a damage award against the locality. Reasonableness is best established if the community can document that it is facing a true emergency. Several court decisions sustaining moratoria refer to the "dire necessity" that justifies them. Such a necessity arises not only when health and safety risks are confronted, but also when the community is facing a significant new land use problem that its existing regulations were not designed to handle.

For the same reason, when specific action plans and timetables are established to deal with the necessity or emergency, the reasonableness of the locality's moratorium

is demonstrated. Similarly, a community needs to make reasonable progress in carrying out the plan and adhering to the schedule so its actions are seen to be reasonable. Moratoria that have been extended for up to three years have been sustained by a showing that the community was diligently pursuing its plan and timetable and shorter moratoria have been voided because the community was making little or no progress. In the same way, the plan must be calculated to deal directly with the necessity or emergency at hand; otherwise, its reasonableness may be questioned.

Moratoria do not apply to approved projects where the developer has completed construction or has completed substantial construction in reliance on a development approval or permit. Such developers are said to have vested rights in their permits and to be immune from changes in applicable regulations. Other property owners, who have made less progress, are said to have no legitimate or enforceable expectation that the rules applicable to the development of their land might not change in the interest of protecting the public health, safety or welfare.

CITATIONS:

1. In *Duke v. Town of Huntington*, 153 Misc.2d 521, 581 N.Y.S.2d 978 (Sup.Ct., Suffolk Co., 1991), the property owner challenged a moratorium prohibiting construction of any docks. The court held the moratorium unreasonable under the circumstances.
2. In *B & L Development Corp. v. Town of Greenfield*, 146 Misc. 2d 638, 551 N.Y.S.2d 734 (1990), the court struck down a one year moratorium on all building permits and land use approvals including subdivision and site plans. **The court found that in adopting the moratorium, the Town had failed to notify the county government** under General Municipal Law § 239-m and adjacent communities under Town Law § 264 and to follow its own requirements for adopting zoning provisions.
3. In *Cellular Telephone Co. v. Tarrytown*, 209 A.D.2d 57, 624 N.Y.S.2d 170, (2nd Dep't, 1995) the court struck down a moratorium prohibiting the construction of cellular antenna.

SOURCE:

Local Leader's Guide to Land Use Practice, Second Edition (In Progress), Series III: Innovative Tools and Techniques, Issue 1: Moratorium on Development, <http://www.law.pace.edu/landuse/morato~1.html>, downloaded 4/23/98.